

STATE OF MICHIGAN
COURT OF APPEALS

KRYSTA D. GAGNE,

Plaintiff-Appellant,

v

JOSEPH BRENT SCHULTE,

Defendant-Appellee.

UNPUBLISHED
February 28, 2006

No. 264788
Oakland Circuit Court
LC No. 2004-057749-NI

Before: O’Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

In this action to recover third-party noneconomic damages under the no-fault act, plaintiff appeals as of right from a circuit court order granting defendant’s motion for summary disposition and denying plaintiff’s motion for partial summary disposition pursuant to MCR 2.116(C)(10). Plaintiff challenges the trial court’s determination that she failed to show that her injuries affected her general ability to lead her normal life, as is necessary to establish a serious impairment of body function under MCL 500.3135(1). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo the trial court’s decision granting or denying summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A plaintiff may recover noneconomic damages under the no-fault act only where the plaintiff has suffered "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). Serious impairment of body function means "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." MCL 500.3135(7).

In order to meet the serious impairment threshold, a plaintiff must demonstrate that, as a result of the impairment, he or she is no longer generally able to lead his or her normal life. *Kreiner v Fischer*, 471 Mich 109, 130; 683 NW2d 611 (2004). “Although some aspects of a plaintiff’s entire normal life may be interrupted by the impairment, if, despite those impingements, the course or trajectory of the plaintiff’s normal life has not been affected, then the plaintiff’s ‘general ability’ to lead his normal life has not been affected and he does not meet the ‘serious impairment of body function’ threshold.” *Id.* at 131. Where there is no material fact dispute concerning the nature and extent of the plaintiff’s injuries, whether the injuries meet the serious impairment of body function threshold is a question of law for the courts. MCL 500.3135(2); *Kreiner*, *supra* at 131-132.

In the present case, it is undisputed that plaintiff's impairment was objectively manifested and affected an important body function. Hence, the only question is whether the impairment affected her general ability to lead her normal life. In *Kreiner*, our Supreme Court explained the nature of the relevant inquiry.

The starting point in analyzing whether an impairment affects a person's "general," i.e., overall, ability to lead his normal life should be identifying how his life has been affected, by how much, and for how long. Specific activities should be examined with an understanding that not all activities have the same significance in a person's overall life. Also, minor changes in how a person performs a specific activity may not change the fact that the person may still "generally" be able to perform that activity. [*Kreiner, supra* at 131.]

Hence, we must examine plaintiff's lifestyle before the accident and compare it to her lifestyle after the accident and, under a totality of the circumstances, determine whether the serious impairment threshold has been met. *Id.* at 133-134.

We agree with the trial court's conclusion that the injury plaintiff suffered does not meet the serious impairment threshold. Although the stability of her knee was reduced and plaintiff indicated that she believed she was unable to do certain recreational activities, e.g., gymnastics, roller-blading, ice-skating, plaintiff did not indicate that these activities played a particularly important role in her pre-accident life. *Kreiner, supra* at 134 n 19; cf. *Williams v Medukas*, 266 Mich App 505, 509; 702 NW2d 667 (2005) (noting that the plaintiff had a permanent loss in the range of motion of his shoulder, which prevented him from playing golf, inhibited his ability to coach basketball, and prevented him from participating in recreational activities with his grandchildren.). In addition, plaintiff's physician opined that she might be able to perform those activities in the future with a "brace as psychological support as well as a knee support." He also noted that most patients do well after the type of surgery performed on plaintiff. Finally, while plaintiff suffered from a greater degree of impairment in the months before surgical intervention, there is no evidence that this period of decreased function affected her life so extensively that it altered the trajectory or course of her entire normal life. Consequently, the trial court correctly ordered summary disposition in favor of defendant.

Affirmed.

/s/ Michael R. Smolenski

/s/ Michael J. Talbot